

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

COMMODITY FUTURES TRADING	:	Case No. 01-8350
COMMISSION,	:	
	:	
Plaintiff	:	CIV-DIMITROULEAS
vs.	:	
	:	MAGISTRATE JUDGE
INTERNATIONAL CURRENCY	:	JOHNSON
STRATEGIES, INC., et al,	:	
	:	
Defendants.	:	

**CONSENT ORDER OF PERMANENT INJUNCTION AND
RESTITUTION; FINDINGS OF FACT AND CONCLUSIONS OF LAW
AGAINST DEFENDANTS DANIEL PHILLIPS AND
INTERNATIONAL CURRENCY STRATEGIES, INC.**

On April 20, 2001, Plaintiff Commodity Futures Trading Commission (“the Commission”) filed a Complaint against International Currency Strategies, Inc. (“ICS”) and Daniel Phillips (“Phillips”), seeking injunctive and other equitable relief for violations of the Commodity Exchange Act, as amended (“the Act”), 7 U.S.C. §§ 1 et seq. (1994), and the Commission Regulations promulgated thereunder (“Regulations”), 17 C.F.R. §§ 1 et seq. (2000).

On July 13, 2001, the Court entered a Consent Order of Preliminary Injunction with Asset Freeze which, *inter alia*, froze Defendants’ assets, prohibited their destruction of documents, preliminarily enjoined them from further violating the Act as alleged in the Complaint, and appointed a permanent Receiver.

I.

CONSENTS AND AGREEMENTS

To effect settlement of the matters alleged in the Complaint against Phillips and ICS without a trial on the merits or any further judicial proceedings, defendants Phillips and ICS:

1. consent to the entry of this Consent Order of Permanent Injunction and Other Equitable Relief Against Defendants Phillips and ICS (“Order”);
2. affirm that Phillips and ICS have agreed to this Order voluntarily, and that no promise or threat has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order, other than as set forth specifically herein;
3. acknowledge service of the Summons and Complaint;
4. admit jurisdiction of this Court over them and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001);
5. admit that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001);
6. waive:
 - a. all claims which they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (1994) and 28 U.S.C. § 2412 (1994), as amended by Pub. L. No. 104-121, §§ 231-32, 110 Stat. 862-63, and Part 148 of the Regulations, 17 C.F.R. §§ 148.1 et seq., relating to, or arising from, this action;

b. any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and

c. all rights of appeal from this Order; and

7. consent to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Order and for any other purposes relevant to this case.

8. By consenting to the entry of this Order, Phillips and ICS neither admit nor deny the allegations of the Complaint or Findings contained in Part II of this Order, this Order except as to jurisdiction and venue. However, Phillips and ICS agree and the parties to this Order intend that the allegations of the Commission's Complaint and all of the Findings of Fact made by this Court and contained in Part II of this Order shall be taken as true and correct and be given preclusive effect without further proof only for the purposes of any subsequent bankruptcy proceeding filed by, on behalf of, or against Phillips and ICS for the purpose of determining whether their restitution obligation and/or other payments ordered herein are excepted from discharge. Phillips and ICS shall provide immediate notice of any bankruptcy proceedings filed by, on behalf of, or against them by sending it by certified mail, return receipt requested to: Director, Division of Enforcement, Commodity Futures Trading Commission 1155 21st Street, N.W., Washington, DC 20581.

9. By consenting to the entry of this Order, Phillips and ICS agree that: (1) they will not take any action or make or permit to be made any public statement denying, directly or indirectly, any findings or conclusion contained in this Order or creating, or

tending to create, the impression that this Order is without a factual basis; and (2) no agent or employee of Phillips or ICS acting under their authority or control shall take any action or make or permit to be made any public statement denying, directly or indirectly, any of the findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without factual basis, and Phillips and ICS shall undertake all steps necessary to assure that all of their agents and employees understand and comply with this agreement. Nothing in this provision affects Phillips' or ICS': (1) testimonial obligations; or (2) right to take legal positions in other proceedings to which the Commission is not a party.

II.

FINDINGS OF FACT & CONCLUSIONS

It further appearing to this Court that there is no just reason for delay, the Court being fully advised in the premises and the Court finding that there is just cause for entry of this Order that fully disposes of all issues in this matter, THE PARTIES AGREE AND THE COURT FINDS THAT:

10. Commodity Futures Trading Commission is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Act. 7 U.S.C. §§ 1, et seq., and the regulations promulgated thereunder, 17 C.F.R. §§ 1, et seq., (2000).

11. ICS, whose principal place of business was located at 515 N. Flagler Drive, Suite 703, West Palm Beach, Florida 33401, was incorporated in Florida on July 6, 2000.

12. Phillips is a resident of Florida and is the registered agent and sole director of ICS. He was a joint signatory on two ICS bank accounts, and the sole signatory on three others.

13. Section 2(c)(2)(B) of the Act, as amended by the Commodity Futures Modernization Act of 2000 (“CFMA”), Appendix E, to Public L. No. 106-554, 114 Stat. 2763 (2000), grants the Commission jurisdiction over certain retail currency options. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (1994), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, or is about to engage, in any act or practice constituting a violation of the Act or any rule, regulation, or order thereunder.

14. At all times relevant to this action, Phillips and ICS resided in and transacted business in this judicial district, among other places.

15. Neither Phillips nor ICS has ever been, and is not now, registered with the Commission as a contract market.

16. From December 21, 2000 to April 24, 2001, Phillips and ICS fraudulently telemarketed foreign currency options contracts to individuals nationwide. Defendants’ telemarketers initiated cold calls in which they claimed to offer an extraordinary opportunity in the foreign currency (“Forex”) market. Typically, they claimed that because of the weakening U.S. dollar or other market news, the value of the Euro (which they sometimes refer to as the Eurodollar) or the Japanese Yen was poised to skyrocket, allowing quick-acting customers to make huge profits in a matter of a few weeks or months through the purchase of Forex options. At the same time, ICS

telemarketers assured customers that they would eliminate the risk by watching the market closely for just the right time to sell. The sales pitch was replete with high-pressure tactics, which included sending account documentation by FedEx or fax, sometimes to be completed while a FedEx delivery truck waited. Shortly after the initial purchase, telemarketers generally told customers that their account had been reassigned to another broker who then solicited even larger investments based on similar claims.

17. The documentation that Phillips and ICS furnished to customers in connection with the sale of foreign currency options did not include a disclosure statement including such key information as the duration of the option, a list of elements comprising the purchase price, a description of all costs that may be incurred if the option is exercised, and an explanation concerning the necessary fall or rise in the price of the contract underlying the option in order for the customer to profit.

18. The span of each customer's dealings with the defendants was brief. Once customers refused to make additional purchases, or asked their salesman to sell them out of a position, or sought to liquidate their accounts, the customer service was quickly over. Telemarketers refused to honor customer instructions in that they initially promised to effect the sale requested by the customer but announced later that they had not taken care of it, or in many cases, failed to return repeated phone messages – even to the point of allowing options that theoretically could have been exercised to expire worthless.

19. Defendants misappropriated and used for personal expenses all or almost all of the customer funds they received.

20. As a result of defendants' fraudulent representations, and reliance thereon, misappropriation after, ICS clients suffered losses that amounted to \$734,545.99.

21. Defendant Phillips, as principal and director of ICS, directly or indirectly controlled ICS and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described herein.

22. By the conduct described in paragraphs 10 through 21, Phillips and ICS cheated or defrauded or attempted to cheat or defraud and willfully deceived or attempted to deceive investors, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (1994) ("Section 4c(b)"), and Regulation 32.9, 17 C.F.R. §32.9 (2000). Additionally, because the purported options sold by the defendants were not consummated on or subject to the rules of a contract market designated by the Commission, the defendants have violated Section 4c(b) of the Act and Regulations 32.11 and 33.3(a) thereunder, 17 C.F.R. §§32.11 and 33.3(a)(2001). The defendants also violated Section 4c(b) of the Act and Regulation 32.5, 17 C.F.R. §32.5 (2001), by failing to provide prospective customers with the requisite disclosure statement including a brief description of the transaction (including the duration of the options offered and a list of elements comprising the purchase price), a description of all costs that may be incurred by the customer if the option is exercised, an explanation concerning the necessary rise or fall in the price of the contract underlying the option in order for the customer to profit, and a specific, boldfaced statement concerning the risk of loss.

23. Defendant Phillips, as a controlling person of ICS, is liable for its violations of Section 4c(b) and Regulations 32.5, 32.9, 32.11, and 33.3, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

III.

ORDER FOR PERMANENT INJUNCTION

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

24. Defendants Phillips and ICS and any person insofar as he or she is acting in the capacity of officer, agent, servant, employer, or attorney of Phillips or ICS, and any person insofar as he or she is acting in active concert or participation with Phillips or ICS who receives actual notice of such order by personal service or otherwise, is permanently restrained, enjoined, and prohibited from directly or indirectly:

A. Cheating or defrauding or attempting to cheat or defraud other persons by making false, deceptive, or misleading representations of material facts and by failing to disclose material facts, in soliciting customers or potential customers, in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, commodity option transactions and misappropriating customer funds in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) and Regulation 32.9.

B. Offering to enter into, entering into, executing, confirming the execution of, or conducting business for the purpose of soliciting, accepting any order for, or otherwise dealing in any transaction in, or in connection with, a commodity option when: (1) such transactions have not been conducted on or subject to the rules of a board of trade which has been designated by the Commission as a “contract market” for such commodity; and (2) such contracts have not been executed or consummated by or through a member of such contract market, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulations 32.11 and 33.3, 17 C.F.R. §§ 32.11, 33.3;

C. Failing to furnish customers with the disclosure statement required for options transactions in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 32.5, 17 C.F.R. § 32.5;

D. Trading on or subject to the rules of any registered entity;

E. Engaging in, controlling, or directing the trading of any futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise; and

F. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2001), or acting as a principal, agent, officer or employee of any person registered, required to be registered, or exempted from registration, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2001).

IV.

OTHER EQUITABLE RELIEF

25. **RESTITUTION:** The Court finds that an award of restitution in the amount of \$734,545.99 is appropriate. The Court also recognizes that defendant Phillips and co-defendant, Valentin Fernandez, plead guilty in the related criminal action entitled *United States v. Valentin Fernandez, Juan Fernandez, and Daniel Phillips*, Cr. Action No. 01-CR-8060 (S.D. Fla. March 6, 2002). It is anticipated that the defendants will be ordered to pay restitution in the criminal action on behalf of a group of customers that

includes all the customers addressed by this action, and in an amount that encompasses the entirety of the losses suffered by customers in this action.

In the event that no restitution is ordered or is ordered in an amount less than \$734,545.99 as part of the sentencing in the related criminal matter, then defendants shall be required to pay any deficiency between the amount of criminal restitution ordered and the restitution amount provided above in this matter. In the event that restitution is ordered and paid as part of the sentencing in *United States v. Valentin Fernandez, Juan Fernandez, and Daniel Phillips* in an amount equal to or greater than the \$734,545.99 restitution imposed in this matter, defendants Phillips and ICS's restitution obligations in this action will be satisfied. The Commission shall file a copy of the sentencing order from the criminal matter and, in the event of a deficiency, a proposed judgment reflecting same.

V.

MISCELLANEOUS PROVISIONS

26. ENTIRE AGREEMENT, AMENDMENTS AND SEVERABILITY:

This Order incorporates all of the terms and conditions of the settlement among the parties. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless: (1) reduced to writing; (2) signed by all parties; and (3) approved by order of the Court. If any provision of this Order or the application of any provision or circumstance is held invalid, the remainder of this Order shall not be affected by the holding.

27. SUCCESSORS AND ASSIGNS: This Order shall inure to the benefit of and be binding on the parties' successors, assigns, heirs, beneficiaries, and administrators.

28. **JURISDICTION:** This Court shall retain jurisdiction of this cause to assure compliance with this Order and for all other purposes related to this action.

29. Upon the entry of this Order, the provisions of the Court's May 30, 2001 Consent Order for Preliminary Injunction entered against Defendants Phillips and ICS, imposing a freeze on their assets and appointing a permanent Receiver shall no longer be in effect.

30. ICS warrants that this Order has been duly authorized by its Board of Directors, and is signed and submitted on its behalf by a duly empowered officer. ICS represents that it has read this Order and declares that no promise, threat or inducement of any kind has been made to it by the Commission or its staff to induce it to tender this Offer and that submission of this Offer is a free and voluntary act on ICS's part.

APPROVED AS TO FORM AND CONTENT:

Daniel Phillips, Individually and as
President of International Currency,
Strategies, Inc.

Date: _____

Allan Lerner, Attorney for
Daniel Phillips

Date: _____

Keith M. Cave, Trial Attorney
U.S. Commodity Futures Trading
Commission

Date: _____

SO ORDERED, at Ft. Lauderdale, Florida on this 15th day of July, 2002, at
_____.m.

WILLIAM P. DIMITROULEAS
UNITED STATES DISTRICT JUDGE